

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

UNITED STATES OF AMERICA :
 : CASE NO.
 v. : 1:00-CR-00173
 :
 JAMES ANTHONY HUGHES :

TRANSCRIPT OF PROCEEDINGS
HEARING ON DOWNWARD DEPARTURE MOTION
PURSUANT TO RULE 35

BEFORE: HON. SYLVIA H. RAMBO

DATE : October 27, 2004
9:15 a.m.

PLACE : Courtroom No. 3, 8th Floor
Federal Building
Harrisburg, Pennsylvania

BY : Wendy C. Yinger
U.S. Official Court Reporter

**FILED
HARRISBURG**

DEC 08 2004

APPEARANCES:

ERIC PFISTERER, ESQUIRE
ASSISTANT U.S. ATTORNEY
For the United States of America

THOMAS A. THORNTON, ESQUIRE
For the Defendant

MARY E. D'ANDREA, CLERK
Per DEPUTY CLERK

ORIGINAL

1 THE COURT: This is the time and place for a
2 hearing on a downward departure pursuant to Rule 35 in
3 the case of U.S.A. v. James Anthony Hughes. I think
4 that's the only thing we're here for today.

5 MR. PFISTERER: That's correct, Your Honor.

6 THE COURT: In your response to the 2255
7 motion, you indicated there was an oversight in not
8 filing a Rule 35 and that you were recommending a 20
9 percent additional departure, correct?

10 MR. PFISTERER: That's correct, Your Honor.
11 The reason -- I don't know why no follow-up occurred. I
12 recall Agent Morgan, sometime after the Defendant had
13 been sentenced, calling me asking for permission to talk
14 to the Defendant about some ongoing matters in York
15 County, and our office's position was that, that was
16 fine.

17 Then I don't believe I heard from him again
18 until I called him in response to seeing the defense
19 2255 and asking him if, in fact, did the Defendant
20 testify? He indicated that he did. I placed that
21 information in our motion.

22 Mr. Thornton pointed out to me this morning,
23 and just to make sure that the record is clear on this,
24 I detailed at page 6 of our response, Mr. Hughes'
25 cooperation with Assistant United States Attorney

1 Christy Fawcett in a previous case in which we decided
2 that, that cooperation didn't rise to the level that
3 would support a Rule 35.

4 I did not put in there, though I think I was
5 aware of it, that in that case, the Defendant did, in
6 fact, testify in the grand jury. He did not testify at
7 trial. And the rest of the information in there is
8 accurate.

9 THE COURT: Is that the Gooding case?

10 MR. PFISTERER: No, Your Honor, this is a --
11 prior to his cooperation in the murder case, he had been
12 questioned about a drug investigation that Attorney
13 Fawcett was involved in. He did, in fact, testify in
14 the grand jury about one of the four Defendants that was
15 indicted in that case, but did not testify at trial.
16 And the rest of the information I gave about that case
17 and his cooperation is otherwise correct.

18 THE COURT: Okay.

19 MR. PFISTERER: That's all I have on the
20 motion, Your Honor. I believe that, taken as a whole,
21 his prior record, the break that we recommended for him
22 in the 5K1 originally, that this, based on his
23 cooperation since then, is an appropriate
24 recommendation.

25 THE COURT: Mr. Thornton.

1 MR. THORNTON: Your Honor, we'd like to
2 present Mr. Hughes for testimony.

3 THE COURT: All right.

4 Whereupon,

5 **JAMES ANTHONY HUGHES**

6 having been duly sworn, testified as follows:

7 COURTROOM DEPUTY: Would you state your name
8 for the record, please?

9 THE WITNESS: James Anthony Hughes.

10 COURTROOM DEPUTY: Thank you.

11 **DIRECT EXAMINATION**

12 BY MR. THORNTON:

13 Q. Mr. Hughes, are you currently incarcerated at the
14 medium correctional facility at Allenwood?

15 A. Yes, sir.

16 Q. Previous to that, you were at Schuylkill; is that
17 correct?

18 A. Yes, sir.

19 Q. Mr. Pfisterer just described the grand jury
20 testimony that you gave in the case involving the 212
21 gang. Can you tell us exactly who you testified against
22 in that case?

23 A. Mike Parker and Thaddeus Westry.

24 Q. Westry, W-e-s-t-r-y?

25 A. Yeah.

1 Q. When you were brought down --

2 THE COURT: May I have those names again?

3 MR. THORNTON: Mike Parker.

4 THE COURT: Harker, H-a-r-k --

5 MR. THORNTON: No, P.

6 THE COURT: Oh, Parker. Is that correct?

7 MR. THORNTON: Yes. And Thaddeus Westry,

8 W-e-s-t --

9 THE COURT: r-y?

10 MR. THORNTON: Yes.

11 THE COURT: Thank you.

12 BY MR. THORNTON:

13 Q. Can you tell us where -- where did you come from
14 to testify in front of that grand jury? Where were you
15 incarcerated?

16 A. I was in Schuylkill, Schuylkill medium facility.

17 Q. How long had you been there?

18 A. I was there from March 12th to, I think, April
19 19th, 2002 -- not April, August. August 19th, somewhere
20 around there.

21 Q. While you were at the Federal Correctional
22 Institution at Schuylkill, were you participating in the
23 programming and doing all that sort of --

24 A. Yeah, yeah. I was doing quite a few programs.
25 Drug lifestyles, that has to do with like understanding

1 your criminal behavior, addressing it, and changing it;
2 the drug program, Dr. Walters, he ran that; also
3 creative writing classes, because I found out that I
4 have a, you know, ability to write.

5 Q. Is that all at Schuylkill?

6 A. Yeah. It was a bunch of other programs, too, you
7 know. I was really, you know, trying to just
8 rehabilitate myself through, you know, the programs they
9 offer.

10 Q. Did you have any write-ups while you were at
11 Schuylkill?

12 A. Oh, no, never.

13 Q. And what occurred that made you leave Schuylkill?

14 A. Well, I looked on the call-out, and I seen that I
15 was out on writ. They posted it up, you know, for writ.
16 And I pretty much knew it was probably -- I was -- that
17 the Parker brothers, you know, the other guys, they were
18 going to trial, so they called me --

19 THE COURT: They were going to what?

20 THE WITNESS: They were going to trial. And
21 they called me to go, I guess, testify at trial. But
22 whoever the judge was that, like, went over the trial
23 said that there was so many witnesses or whatever that,
24 you know, when I got down to Dauphin County, they was
25 telling us that, there was so many witnesses. And

1 after, you know, I guess, the dude's brother, you know,
2 testified, it was like really no need for them to call
3 the people they called down to testify at trial. But,
4 you know, I never testified at the trial with the grand
5 jury.

6 Q. What occurred when you --

7 A. Oh, well, when I seen that I was going out on
8 writ, you know, other inmates, they get to look over it,
9 right. So a dude came up to me, and I was standing on
10 the rail afterwards looking at the TV, and he like
11 cornered me into the rail, and was like, hum, where are
12 you going? Are you going out on writ? You know, you
13 ain't got no legal work. I don't be seeing you with
14 legal work and stuff like that coming in here.

15 And I'm sitting there staring at him, and he's
16 like pushing up on me. Then a bunch of other dudes to
17 the side, and he was like, yo, I tell you what, when you
18 leave and you come back, right, expect that knife to be
19 administered like this, right. So I was pretty much
20 like caught between these dudes, so I like backed up,
21 and I was like, you know, giving him like, you know, yo,
22 what, what you goin on.

23 But I made it to the captain's office, and they
24 put me in protective custody, you know, pretty much,
25 so --

1 Q. That was prior to you coming to Dauphin County?

2 A. Yeah.

3 Q. When you went back, did you go back to
4 Schuylkill?

5 A. Yeah, they put me -- when I went back, I went to
6 PC. Then they transferred me to another prison.

7 Q. Was that Allenwood?

8 A. Yeah, yeah.

9 Q. And what consequences did you suffer as a result
10 of having to leave Schuylkill and going to Allenwood?

11 A. Well, it pretty much knocked me out of my program
12 as far as things I was doing. Then another thing, it
13 made me real reluctant, you know what I'm sayin, to get
14 close to anybody because I knew everybody was subject to
15 scrutinize me, you know what I'm sayin, what I was into
16 or what I was, you know, representing.

17 So, you know, it pretty much caused me to be real
18 reclusive because I was scared, you know. Like right
19 now, I got -- when I leave here, I got some explainin to
20 do when I go back to the other jail, you know, because,
21 you know, I told them, you know, I'm goin back to court,
22 you know, because I got stuff in to do, you know.

23 But it's like really hard because dudes come at
24 you, and the first thing they want to see is your
25 paperwork. That's why, I guess, they got rid of the

1 PSI. But, you know, it's like an unwritten rule, when
2 you come back, you better have your stuff ready or be
3 prepared to go, you know, in the corner pocket, you know
4 what I'm sayin.

5 So that's another stress factor to really, you
6 know, worry about. And, you know, it's just crazy, you
7 know. People, they won't let you just do your time, you
8 know.

9 Q. Now during your incarceration, have you also been
10 able to pay off your fine?

11 A. Oh, yes. Really, that's why I said, when I got
12 to Allenwood, I just worked. They have like an overtime
13 up there where you can do in excess -- I was doing 400
14 hours a month, you know what I mean, like a hundred
15 hours a week, just working, you know. I got that
16 obligation out of the way. And then like right now, I'm
17 involved in mentoring and positive thinking.

18 I just finished art, an art program. Right now,
19 I'm involved in typing I class. I'm learning how to
20 type. It's just so much I'm doing. I learned -- I
21 taught myself a second language. All kinds of stuff,
22 you know.

23 Q. There is also another situation where you did
24 come and testify in York County. Can you tell the Court
25 what happened with that?

1 A. That was for Willy Gooding. He like committed a
2 murder some years ago, him and a bunch of other fellas.
3 And I had no like direct contact, like as far as like
4 being in their little gang, like participating with the
5 murder or anything, but I was involved somehow because,
6 just by happenstance, I just happened to be there when
7 it goes down. And when the dude got murdered, it was
8 like a friend of a friend, and, you know, I went to, you
9 know, the people and told them I knew.

10 So I worked on their behalf by literally finding
11 out the information, turning on. So he went on the run.
12 He was like on America's Most Wanted and all kinds of
13 stuff. So when they finally found him in like 2000, you
14 know, they got ahold of him, and then they called me
15 down.

16 Q. What exactly did you testify to?

17 A. What he told me, you know. Like him and the
18 dude, Nino, they basically, when the situation went
19 down, I happened to just walk in their house. And dude
20 was like, yo, I'm gonna show you how somebody get
21 killed. I was like, oh, what's going on? Then he
22 explained that some people just tried to rob him, right.
23 I'm like, I'm just here to pick up my Nintendo, you know
24 what I mean. I'm leaving.

25 Then he asked me for a gun, you know, to do some

1 dirt with. I'm like, you know. Then like, dude got
2 found the next day. The next prior day, the guy got
3 shot in his face and all that. And it was like a couple
4 blocks from where I was stayin at. They took him up in
5 this place. But I seen the dude Willy like three days
6 later.

7 And I got in the car and just, you know, test,
8 you know. I'm like, yo, the dude Gerber, man, you know
9 somebody killed him? He was like, yeah, you know,
10 that's how we do, you know, people get in the way,
11 blase-blah, you know.

12 Q. Did you testify to that at trial?

13 A. Yeah.

14 Q. And was he convicted?

15 A. He was convicted. Yeah, he was convicted.

16 Q. And those are the two, I guess, instances of
17 information that you have given since your
18 incarceration, is that right, or is there more?

19 A. Well, when I was in the hole up at Schuylkill, I
20 was trying to contact Mr. Pfisterer and let him know,
21 you know. I was writing letters letting him know what
22 I've done, and I was in the hole, and the circumstances
23 why I was in the hole. And basically, I was, you know--

24 Q. Were there other things that you were trying to
25 tell Mr. Pfisterer about?

1 A. Yeah. Excuse me for a second.

2 Q. Are you all right?

3 A. Yeah. Excuse me. Sorry.

4 Q. Is this an emotional situation for you, Mr.
5 Hughes?

6 A. Yeah, just everything, you know, because I know,
7 you know, I'm perceived as what I am perceived as. But,
8 you know, I'm making a hell of a, you know, try to turn
9 my whole life around, my whole train of thought, and
10 better myself. And I just can't believe, you know,
11 that -- when I got in trouble, I told them, you know,
12 I'm tired of it all, you know.

13 I just want to end this here. And I'm pretty
14 much glad I got caught because I was stressed out in my
15 mind just dealin with this stuff. I just -- I know the
16 word fair is kind of, you know, a hard word, but I gave
17 my half of the bargain where, not only was I sorry for
18 the wrong I did, I was just trying to make amends by
19 burning all the bridges that Mr. Pfisterer asked me to
20 burn, and what he would give me if I pled guilty, this
21 is what I would do.

22 And I did that. And all I'm askin is just for
23 another chance to be with my daughters and just really
24 plant seeds in them to show them that this right here is
25 just not the road, you know. And I really believe that

1 just -- I just need a chance. And I understand, you
2 know, that Mr. Pfisterer gets a job to do, but I was
3 under the assumption that everybody was gonna play by
4 the book, you know. Just, hey, you do this.

5 My attorney, he drilled it in my head. He was
6 like, yo, you do this, and you ain't got nothin to worry
7 about. He was like, you ain't got no problems to think
8 about somebody that's going to screw you because he
9 wouldn't do that because that's just not how it's done.

10 Q. Hang on for one second. In the courtroom are
11 some individuals. Are they family members?

12 A. My two daughters, my -- if you want to say, my
13 wife, my common-law wife. It's been hard on them, you
14 know. My five-year-old, she basically, you know, she
15 ain't get a chance, you know, to really be around me.
16 And it's hard on my wife.

17 I was the only support they had. They're
18 basically caught in what I did. And it just kills me to
19 know that I put them through it, you know. And just --
20 I just want -- I don't expect ya all to let me go. I
21 don't expect that. But just give me a chance to -- I
22 want to be there. Excuse me for crying.

23 I want to be there when my daughter goes through
24 a guy trying to take advantage of her, you know what I
25 mean. I want to be there, you know. And she gets honor

1 roll every marking period. I want to be there when she
2 walks across that stage, you know what I mean. Excuse
3 me. I'm sorry for crying. I just --

4 Q. That's all right. Mr. Hughes, what you said a
5 moment ago was that originally that your attorney was
6 Frank Arcuri; is that right?

7 A. Yeah.

8 Q. And correct me if I'm wrong here. I'm sort of
9 trying to paraphrase what you said. But Mr. Arcuri,
10 when he originally worked the plea agreement with you
11 and got you to sign the plea agreement, promised you a
12 certain amount of reduction?

13 A. Yes, he did. Yes, he did. When I first -- Mr.
14 Pfisterer, when we sat across the table, my attorney was
15 sitting here, and Mr. Pfisterer said, listen. All
16 right. Here's the deal. Standard procedure. My
17 attorney basically was telling me, yo, 50 percent -- and
18 I would not lie, just because I know, lies compound upon
19 lies, where they get you. They get you nowhere.

20 THE COURT: I think I addressed this issue
21 in a memo, promises made by counsel.

22 THE WITNESS: I'm sorry. I'm sorry.

23 MR. THORNTON: I wasn't sure if that was
24 addressed or not. I'll move on.

25 THE WITNESS: But right now, I'm really

1 upset that I'm crying and everything. So please excuse
2 me. I just want to say, you know, before the Court
3 that, you know, I'm cured of the disease, you know, that
4 basically had me thinking that, you know, that was the
5 only thing I had to do, you know.

6 I know I'm above that now, you know. I know
7 that the ramifications, what it does to families. I
8 regret, as far as the people that I hurt. I even
9 understand, like the addicts I used to, you know, give
10 stuff to, that they had kids, you know. I know, like
11 going to jail, people usually make newfound Christians,
12 you know. I don't pray to, you know, go home. I don't
13 pray for all that. I pray for peace of mind, and I pray
14 for forgiveness that, you know, that the people -- I
15 write people to ask them for forgiveness. I'm sorry.

16 You know what? What I did, you know, wasn't
17 right. And, you know, and I'm paying for it, but, you
18 know, one day maybe we might be able to hookup and, you
19 know, really just understand. We made some mistakes,
20 you know. And the time that, you know, I've been
21 incarcerated, I learned the value of freedom. I learned
22 the work ethic.

23 I mean, I couldn't imagine me not working on
24 the street now. This going out there and wasting, you
25 know, myself away for something that doesn't even amount

1 to nothing, you know. That's beneath me. I feel right
2 now, you know. I'd really just like to stress to the
3 Court, you know, that I'm not crying wolf, you know.
4 I've been in trouble before. I know, you know.

5 And if it was just for me, you know, I
6 shouldn't be taken into consideration because I did
7 wrong, but I just need to give people that love me a
8 second chance through me, you know. It's like, I can be
9 more conducive to my kids if I'm just there, you know.
10 I write them and I try to -- my daughter, I try to give
11 her advice.

12 She's in the 6th grade now, you know. And I
13 try to, you know, tell my wife, you know, little things
14 that she can do to help raise the kids by herself, you
15 know. And it kills her. It just kills her. And, you
16 know -- you know, Your Honor, the Court, I just
17 really -- I mean, I'm being good. And I know some
18 people just be good for the time that they're
19 incarcerated. Just be a good judge. I mean, it's
20 there. The rehabilitation is there. I am trying so
21 hard to just --

22 BY MR. THORNTON:

23 Q. Mr. Hughes, your request of the Court is that the
24 Court depart down to a sentence of 131 months?

25 A. Yeah. That would be, you know, basically a gift,

1 you know, because I know there's a lot of times that,
2 you know, the Court is put in a position, you know, to
3 look at an individual and say, hey, you know, nah,
4 buddy.

5 I'm not saying that I deserve that, but I'm
6 saying that, that fair is fair, and just another chance.
7 Nobody will be sorry. Nobody will be sorry. From the
8 day they arrest me, from the time Mr. Bonovick
9 (phonetic) said, you know what, federal officer. I
10 said, you know what? I'm just tired, and I'm thanking
11 you because I'm just tired of all this. And he said,
12 you know what? That's the best thing you can do for
13 yourself.

14 And from immediately, the people knew that I
15 wasn't gonna put them through too much problem. I just
16 want to get it all over with, you know. Some way, some
17 how, just, you know, just go to, you know, live life, go
18 work at McDonald's, go work in a factory, go do
19 something, but at least be, you know, normal and live.
20 Live. This ain't no life, you know.

21 MR. THORNTON: Thank you very much, Mr.
22 Hughes.

23 THE COURT: Cross-examine.

24 MR. PFISTERER: I have no questions.

25 THE COURT: You may step down.

1 THE WITNESS: I'm sorry for cryin, ya all.

2 MR. THORNTON: Your Honor, we have no
3 further testimony to present. We're arguing along the
4 lines of what Mr. Hughes has suggested. As a result of
5 his cooperation, and not only the Gooding murder case,
6 which seems to have resulted in a verdict of guilty for
7 an individual who killed another person, but he has
8 cooperated in other areas.

9 And also, he's explained the true depth of
10 his conversion really from a life of crime to a person
11 that wants to be upstanding and help with his family and
12 his daughters, who obviously cares for him very much.
13 They've come here today to express that care.

14 Consequently, we'd ask Your Honor to
15 consider a departure down to the range that Mr. Hughes
16 has suggested of 131 months.

17 THE COURT: Mr. Pfisterer.

18 MR. PFISTERER: Your Honor, for the record,
19 I just want to say that the Government does not -- I
20 have not, and I have never made a specific promise to
21 anyone in a criminal case nor, to my knowledge, did Mr.
22 Arcuri, and he certainly did not do it in front of me.

23 Having said that, however, Mr. Hughes has
24 done everything that has been asked of him since the day
25 he was arrested. I have no quarrel with the idea that

1 he has done what I asked him to do, which was to burn
2 all of the bridges he had to criminal conduct and
3 activity so that I would not have to see him again, as I
4 have with a number of people that I've prosecuted.

5 So in that regard, I believe he has, and by
6 his actions, does deserve a Rule 35 reduction that we've
7 made to the Court.

8 THE COURT: What's your response to his
9 request?

10 MR. PFISTERER: Your Honor, it's very
11 difficult to put a month figure on the harassment and
12 the unavoidable conflict that comes in prison with those
13 that cooperate and those that at least can deny it,
14 because, frankly, my experience has been that almost all
15 of them do cooperate.

16 However, those that there's no proof against
17 do tend to persecute those that they can, that they do
18 find information out about their cooperation. I will
19 say that our -- the United States official position is
20 in our motion. Obviously, the Court has the discretion
21 to depart as far as it feels is necessary.

22 THE COURT: How do you come up with the 131?

23 MR. THORNTON: I think the 131, Your Honor,
24 is what Mr. Hughes detailed in his 2255 motion, which
25 would have been basically the promise for, by Mr.

1 Arcuri. It comes to about 50 percent.

2 THE COURT: Do you remember what the
3 reduction was in the initial downward? I know what his
4 sentence ended up being. I don't know what the
5 percentage of reduction was. Do you have that, Mr.
6 Vought?

7 PROBATION OFFICER: I don't know what the
8 percentage is. I have the number of months.

9 THE COURT: It was 192.

10 PROBATION OFFICER: 292 was the minimum.

11 THE COURT: And he got?

12 PROBATION OFFICER: 240.

13 THE COURT: Oh, okay. Can I see Mr. Vought?
14 (Whereupon, a discussion was held at sidebar
15 off the record.)

16 THE COURT: We'll enter this order:

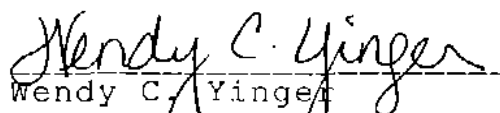
17 The motion under Rule 35 is granted. The
18 judgment of conviction dated 1/19/01 is amended to
19 reflect the imposition of a sentence of 180 months,
20 which represents a 25 percent downward departure. In
21 all other respects, the judgment of 1/19/01 is affirmed.

22 COURTROOM DEPUTY: Court's in recess.

23 (Whereupon, the proceeding concluded at
24 9:44 a.m.)
25

CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.


Wendy C. Yinger
U.S. Official Court Reporter
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